

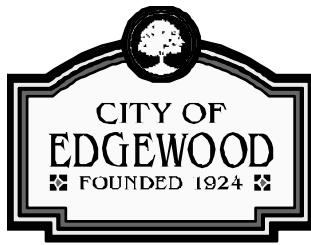
Memorandum

To: Planning and Zoning Board
From: Cinnamon Wild, Administrative Assistant
Date: 12/4/2013
Re: Planning and Zoning Meeting on 12/09/13 – 428 Oak Lynn Drive Variance
for Carl and Amy Peterson (Fence Height)

Please see enclosed the following documentation for your review of the above referenced variance application:

- Variance Application to exceed fence height
- Planner Hardgrove's report
- Parcel 1 and 2 sketch (highlighted with fence location)
- Notice of Public Hearing
- Sign Affidavit (Notice sign was properly and timely posted)

Thank you for your time and consideration of the above variance application.



Susan Lomas
Board Member

Marion Rayburn
Board Member

Jon Von Voorhis
Board Member

Regina Dunay
Chairwoman

Brian Leahy
Co-Chair

PUBLIC NOTICE AND PLANNING AND ZONING BOARD AGENDA December 9, 2013

WELCOME! We are very glad you have joined us for today's Planning and Zoning meeting. The Planning and Zoning Board is an advisory board to City Council comprised of citizen members who voluntarily and without compensation devote their time and talents to a variety of zoning and land development issues in the community. All P&Z recommendations are subject to final action by City Council. The results of today's meeting will be presented at the City Council meeting on **December 17, 2013** for approval of recommended actions. Any person desiring to appeal a recommended action of the Board should observe the notice regarding appeals below. **CAUTION:** Untimely filing by any appellant shall result in an automatic denial of the appeal.

The Planning and Zoning Board as the Local Planning Agency for the City Of Edgewood will meet at 405 Larue Avenue, Edgewood, Florida, to consider the items of business listed herein at the time and date indicated below.

Monday December 9, 2013 6:30 P.M.

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. APPROVAL OF MINUTES
 - November 11, 2013 – Regular P&Z Meeting
4. NEW BUSINESS

VARIANCE 2013-03-VAR – CARL & AMY PETERSON (FENCE HEIGHT)
- 428 Oak Lynn Drive

5. COMMENTS/ANNOUNCEMENTS

FUTURE MEETINGS: (*SCHEDULE CONTINGENT UPON SUBMITTAL OF ITEMS THAT REQUIRE CONSIDERATION OF THE PLANNING & ZONING BOARD AS THE LOCAL PLANNING AGENCY FOR THE CITY OF EDGEWOOD*)

- January 13, 2014
- February 10, 2014
- March 10, 2014

GENERAL RULES OF ORDER

The Board is pleased to hear non-repetitive comments related to business before the Board; however, a five (5) minute time limit per person has been set by the Board. Large groups are asked to name a spokesperson. If you wish to appear before the Board, please fill out an Appearance Request/Lobbyist Registration Form and give it to the City Clerk. When recognized by

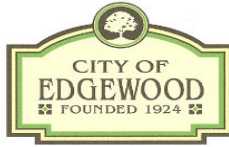
the Chairman, state your name and address and speak directly into the microphone. The City is guided by ROBERTS RULES OF ORDER in governing the conduct of the meeting. Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk at 407-851-2920 at least 24 hours in advance of the meeting.

WE ASK THAT ALL ELECTRONIC DEVICES (IE. CELL PHONES, PAGERS) BE SILENCED DURING OUR MEETING!

Thank you for participating in your government!

APPEALS: According to Edgewood City Code Section 26-24 (2), "any person aggrieved by any recommendation of the Board acting either under its general powers or as a Board of Adjustment may file a notice of appeal to the City Council within seven (7) days after such recommendation is filed with the City Clerk.

You are welcome to attend and express your opinion. Please be advised that Section 286.0105, Florida Statutes state that if you decide to appeal a decision made with respect to any matter, you will need a record of the proceedings and may need to ensure that a verbatim record is made. In accordance with the American Disabilities Act (ADA), if any person with a disability as defined by the ADA needs special accommodation to participate in this proceeding, he or she should telephone the City Clerk at (407) 851-2920.



**Planning & Zoning Meeting
November 11, 2013**

Attendees:

Regina Dunay, Chairwoman
Susan Lomas, Board Member
Marion Rayburn, Board Member
Brian Leahy, Board Member

Absent:

Jon Van Voorhis, Board Member

Staff:

Cinnamon Wild, Administrative Assistant
Sam Sebaali, P.E.
Ellen Hardgrove, AICP
Drew Smith, City Attorney

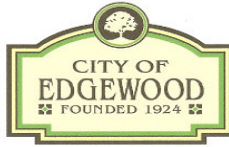
CALL TO ORDER

Chairwoman Regina Dunay called the Planning & Zoning Board meeting to order at 6:30 p.m., followed by the Pledge of the Allegiance. Administrative Assistant Wild announced there is a quorum, and noted that Van Voorhis is absent.

APPROVAL OF MINUTES

- September 19, 2013 Planning & Zoning Board Meeting Minutes

Board Member Rayburn made the Motion to approve the September 19, 2013 minutes; Seconded by Board Member Leahy. Unanimously approved (4/0).



**Planning & Zoning Meeting
November 11, 2013**

VARIANCE 2013-02 –Var- SELECT MEDICAL - 5579 South Orange Avenue

SPECIAL EXCEPTION – 2013-03 –SE- SELECT MEDICAL - 5579 South Orange Avenue

Engineer Sebaali referred to his report and explained his findings, including the increase in the number of employees. He stated that the increase does not match the increase in parking spaces at the hospital. Engineer Sebaali noted that it will improve the existing condition when the additional parking is provided. Chairwoman Dunay noted how the plan indicated an additional 30 jobs will be added due to the expansion. She further noted that an additional 30 spaces would not be required due to the different shifts, and there would be approximately 8 additional employees per shift.

In response to Board Member Leahy, Engineer Sebaali provided clarification as to how the parking spaces for a hospital are determined.

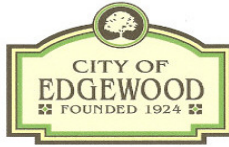
Chairwoman Dunay questioned the tree removal. Engineer Sebaali mentioned how the accounting was done better this time around versus the previous submittal. Chairwoman Dunay also questioned specifically why tree #5 was being removed. In response to Chairwoman Dunay, Engineer Sebaali explained that tree #5 on the plan is within a foot of the curb and you would want to stay within 5 to 10'.

Planner Hardgrove referred to her report. Chairwoman Dunay said that substitutions will need to be approved and referred to her report by Engineer Sebaali or Planner Hardgrove. She said the substitutions are referring to plants and their availability. Planner Hardgrove complimented Genesis on their submittal. Chairwoman Dunay questioned why there were issues with shrubs dying before and if the situation has been corrected. The representatives from Select Medical noted that the issue was the sprinkler system, and it has been corrected. It was also noted that they have had a change in their landscape company which has appeared to correct the issue.

Board Member Leahy made the Motion to approve the site plan subject to the conditions on Engineer/Planner reports; Seconded by Board Member Lomas. Unanimously approved 4/0.

Board Member Leahy made the Motion to approve the Landscape Plan subject to the conditions of Engineer/Planner reports; Seconded by Board Member Lomas. Unanimously approved 4/0.

Administrative Assistant Wild confirmed for Chairwoman Dunay that the Board's recommendation for approval will be on Council Agenda for November 19, 2013.



**Planning & Zoning Meeting
November 11, 2013**

NEW BUSINESS

None.

COMMENTS/ANNOUNCEMENTS

None.

ADJOURNMENT:

With no further business or discussion, the Planning and Zoning Board meeting adjourned at 6:48 p.m.

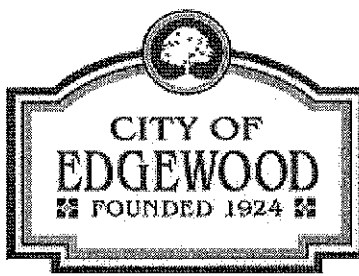
Regina Dunay, Chairwoman

ATTEST

Bea L. Meeks, MMC, CPM
City Clerk

BEA
OR
CINNOBARK

Rec.
11-14-13



APPLICATION FOR VARIANCE

Reference: City of Edgewood Code of Ordinances, Section 126-588

PLANNING & ZONING BOARD

MAKE PAYMENTS TO:

CITY OF EDGEWOOD

FEE: \$350 RESIDENTIAL

\$750 COMMERCIAL

Please type or print. Complete carefully, answering each question and attaching all necessary documentation and additional pages as necessary.

PLANNING & ZONING MEETING DATE:	12/9/13
CITY COUNCIL DATE:	12/17/13

IMPORTANT: FILE BY THE SECOND WEDNESDAY OF THE MONTH FOR FIRST HEARING ON THE SECOND MONDAY OF THE FOLLOWING MONTH

Please note this fee is non refundable.

NOTE: Notarized letter of authorization from Owner MUST be submitted if application is filed by anyone other than property owner

Applicant's Name:	CARL ^{and Amy} Petersen	Owner's Name:	CARL ^{and Amy} Petersen
Address:	428 OAKLYNN DR.	Address:	428 OAKLYNN DR.
Telephone:	(407) 701-3557	Telephone:	(407) 701-3557
Fax:	NA	Fax:	NA
Email:	AMY.TERR34@yahoo.com	Email:	AMY.TERR34@yahoo.com
Parcel ID/Legal description:	13-23-29-6056-01090 Lot 1 PARCELS 12 and Lot 10		
Zoned:	Res.		
Cite section of the Zoning Code from which variance is requested:			
Existing on site:	VACANT		
Request:	5 foot Fence Height		

13-23-29-6056-01090 *
13-23-29-6056-01100 *

To justify this variance, applicant must demonstrate the following:

1. That special condition and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or building in the same zoning classification
2. the special conditions and circumstances do no result from the action of the applicant
3. literal interpretation or enforcement of the provisions of the Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification under the terms of the Ordinance
4. the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible for the regulation at issue
5. the variance sought will not authorize or extend any non conforming use or other non conformity with respect to the land or structures in questions
6. the granting of the variance will be in harmony with the general intent and purpose of this Ordinance, will not be injurious to the area involved, or surrounding properties, and will no authorize a use of the property not permitted by its zoning classification
7. the variance sought will be consistent with the Edgewood Comprehensive Plan

Applicant must agree that:

1. In granting any variance, the City may prescribe appropriate conditions and safeguards in conformity with the Ordinances, and any regulations enacted under its authority. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted shall be deemed a violation of Edgewood ordinances.

AGREE: <i>X CP</i>		DISAGREE:	
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2. The variance recommended by the Planning and Zoning Board and approved by the City Council shall expire in 12 months in accordance with Chapter 134-104 (3) (e).

AGREE: <i>X CP</i>		DISAGREE:	
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3. Concerning Ex parte communications, the applicant shall not speak to members of the Planning and Zoning Board of the City Council prior to the public hearing related to said variance request in order that said board members shall no prejudice themselves prior to said variance request coming before the City in an open proceeding where the decision making process and determination will be in full view of the public, thereby providing due process involving a fair opportunity for the presentation of both sides of the case in an open proceeding where a record of the proceedings may be kept

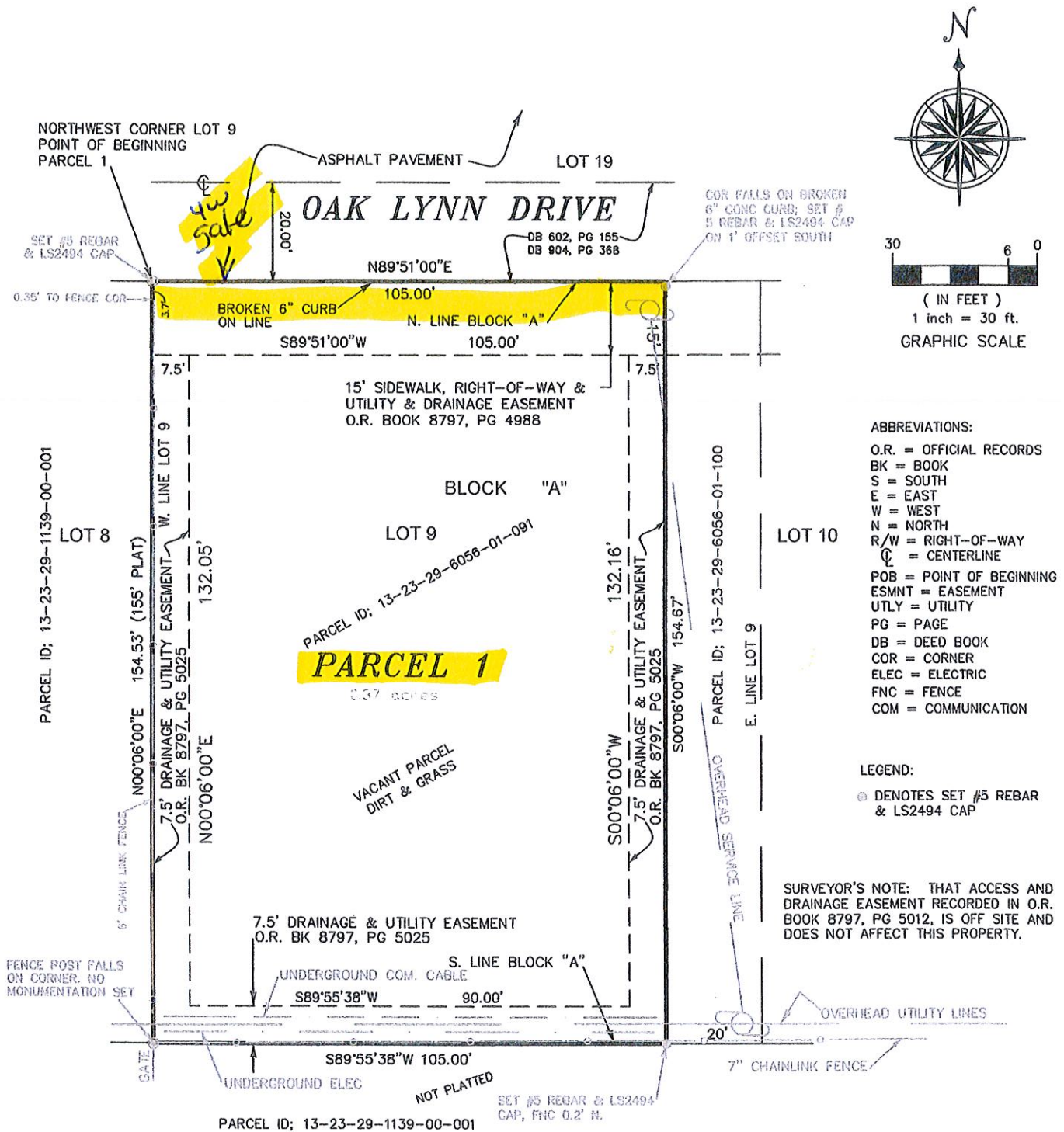
AGREE: <i>X CP</i>		DISAGREE:	
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The applicant hereby states that the above request for Variance does not violate any deed restrictions on the property.

Applicant's Signature:	<i>Carl Peterson</i>	Date:	<i>11/16/13</i>
Applicant's Printed Name:	<i>CARL PETERSON</i>		<i>11/9/13</i>
Owner's Signature:	<i>Same</i>	Date:	
Owner's Printed Name:	<i>Same</i>		

Please submit your completed application to City Hall via email at cityhallstaff@edgewood-fl.gov, via facsimile to 407-851-7361, or hand deliver to City Hall located at 405 Larue Ave. For additional questions, please contact City Hall at 407-851-2920.

Office Use Only:	
Rec'd Date:	11-14-13
Rec'd By:	Bonnylus
Forwarded to:	Cinnamon Wild
Notes:	



NOTES:

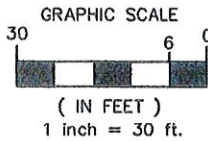
- 1.) BEARINGS BASED PLAT OF, OAK LYNN, 2ND PLAT, PB "W", PAGE 97, ORANGE COUNTY, FLORIDA; THE NORTH LINE OF LYNNWELL DRIVE BEING N89°51'E
- 2.) NO IMPROVEMENTS LOCATED OTHER THAN SHOWN.
- 3.) THERE MAY BE ADDITIONAL RESTRICTIONS THAT ARE NOT SHOWN ON THIS DRAWING THAT MAY BE FOUND IN THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.
- 4.) THIS PROPERTY LIES IN FLOOD ZONES "X" PER F.I.R.M. COMMUNITY PANEL NUMBER, 12095C0430 E, EFFECTIVE: DECEMBER 6, 2000; BASE FLOOD ELEV 89.0
- 5.) THIS SURVEY CERTIFIED TO: CARL & AMY PETERSON

LEGAL DESCRIPTION: PARCEL 1

BEING A PORTION OF LOT 9, BLOCK "A", OAK LYNN SECOND PLAT, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK W, PAGE 97, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

AS TO:

- ① DB 602, PG 155; THE SECOND PARAGRAPH OF THE LEGAL DESCRIPTIONS AFFECTS SUBJECT PROPERTY AND IS PLOTTED HEREON.
- ② DB 904, PG 368; THE FIRST PARAGRAPH OF THE LEGAL DESCRIPTIONS IS UNREADABLE AND IS NOT ADDRESSED. THE SECOND PARAGRAPH OF THE LEGAL DESCRIPTIONS AFFECTS SUBJECT PROPERTY AND IS PLOTTED HEREON. THE THIRD PARAGRAPH OF THE LEGAL DESCRIPTIONS IS UNREADABLE AND IS NOT ADDRESSED. THE FOURTH PARAGRAPH OF THE LEGAL DESCRIPTIONS IS OFF SITE, DOES NOT AFFECT AND IS NOT PLOTTED.
- ③ SIDEWALK, R/W, UTILITY & DRAINAGE ESMNT, O.R. BK 8797, PG 4988 EXHIBIT "A", PARCEL 2, AFFECTS SUBJECTS PROPERTY AND IS SHOWN HEREON.
- ④ SIDEWALK, R/W, UTILITY & DRAINAGE ESMNT, O.R. BK 8797, PG 4988 EXHIBIT "A", PARCEL 2, AFFECTS SUBJECTS PROPERTY AND IS SHOWN HEREON.
- ⑤ ACCESS, UTILITY & DRAIN. ESMNT, O.R. BK 8797, PG 5012 EXHIBIT "A", PARCEL 2, AFFECTS SUBJECTS PROPERTY AND IS SHOWN HEREON.
- ⑥ UTILITY & DRAINAGE EASEMENT, O.R. BK 8797, PG 5025 PARCEL 2, 7.5' WIDE DRAIN, & UTILITY ESMNT AFFECTS SUBJECT PROPERTY & IS PLOTTED HEREON.



$\Delta=2'15'49''$
 $R=66.90'$
 $L=2.64'$
 $T=1.32'$
 $CH=2.64'$
 $CB=S88'43'06''W$

COR FALLS ON BROKEN
6" CONC CURB; SET #
5 REBAR & LS2494 CAP
ON 1' OFFSET SOUTH
(TYP)

LOT 19

OAK LYNN DRIVE

COR FALLS ON BROKEN
6" CONC CURB; SET #
5 REBAR & LS2494 CAP
ON 1' OFFSET SOUTH

BROKEN 6" CONC CURB
 $N89'51'00''E$ 102.36'

③ 15' ADDITIONAL R/W, SIDEWALK, &
DRAINAGE & UTILITY EASEMENT
O.R. BK 8797, PG 4988
 $N89'51'00''E$ 102.42'

POINT OF BEGINNING
PARCEL 2
EXHIBIT "A", PARCEL 2,
O.R. BK 8797, PG 4988
EXHIBIT "A", PARCEL 2,
O.R. BK 8797, PG 5025
EXHIBIT "B", (GRANTEES'
PROPERTY, PARCEL 2
O.R. BK 5017, PG 5012

BLOCK "A"
LOT 9

PARCEL ID: 13-23-29-6056-01-100

500'06'00"W 154.67'

⑤ 7.5' DRAINAGE & UTILITY EASEMENT
PARCEL 2, O.R. BK 8797, PG 5025

E. LINE LOT 9

⑤ **PARCEL 2**

0.47 acres

PARCEL ID: 13-23-29-6056-01-091
VACANT PROPERTY, GRASS & DIRT

BLOCK "A"
OAK LYNN, SECOND PLAT
PLAT BOOK W, PAGE 97

LOT 10

40.00'

⑤ 40' INGRESS/EGRESS, DRAIN, & UTILITY ESMNT
EXHIBIT "A", PARCEL 2, AFFECTS SUBJECTS PROPERTY AND IS SHOWN HEREON.

⑤ 7.5' DRAINAGE & UTILITY EASEMENT
PARCEL 2, O.R. BK 8797, PG 5025

⑤ 15' ADDITIONAL R/W, SIDEWALK, &
DRAINAGE & UTILITY EASEMENT
O.R. BK 8797, PG 4988

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ABBREVIATIONS:

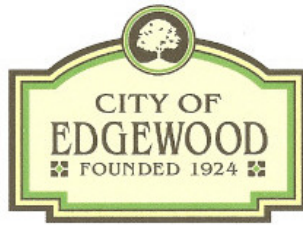
O.R. = OFFICIAL RECORDS
BK = BOOK
S = SOUTH
E = EAST
W = WEST
N = NORTH
R/W = RIGHT-OF-WAY
CL = CENTERLINE
PC = POINT OF CURVATURE
PT = POINT OF TANGENCY
POC = POINT ON CURVE
WUP = WOOD UTILITY POLE

LEGAL DESCRIPTION: PARCEL 2

BEING A PORTION OF LOTS 9 AND 10, BLOCK "A", OAK LYNN SECOND PLAT, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK W, PAGE 97, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM THE NORTHWEST CORNER OF AFORESAID LOT 9, RUN $N89'51'00''E$ ALONG THE NORTH LINE OF AFORESAID BLOCK "A" A DISTANCE OF 105.00 FEET TO THE POINT OF BEGINNING; THENCE DEPARTING THE NORTH LINE OF SAID BLOCK "A" RUN $S00'06'00''W$ PARALLEL WITH THE WEST LINE OF SAID LOT 9, A DISTANCE OF 154.67 FEET TO THE SOUTH LINE OF SAID BLOCK "A"; RUN THENCE $N89'58'38''E$ ALONG THE SOUTH LINE OF SAID BLOCK "A" A DISTANCE OF 159.52 FEET; THENCE DEPARTING THE SOUTH LINE OF SAID BLOCK "A"

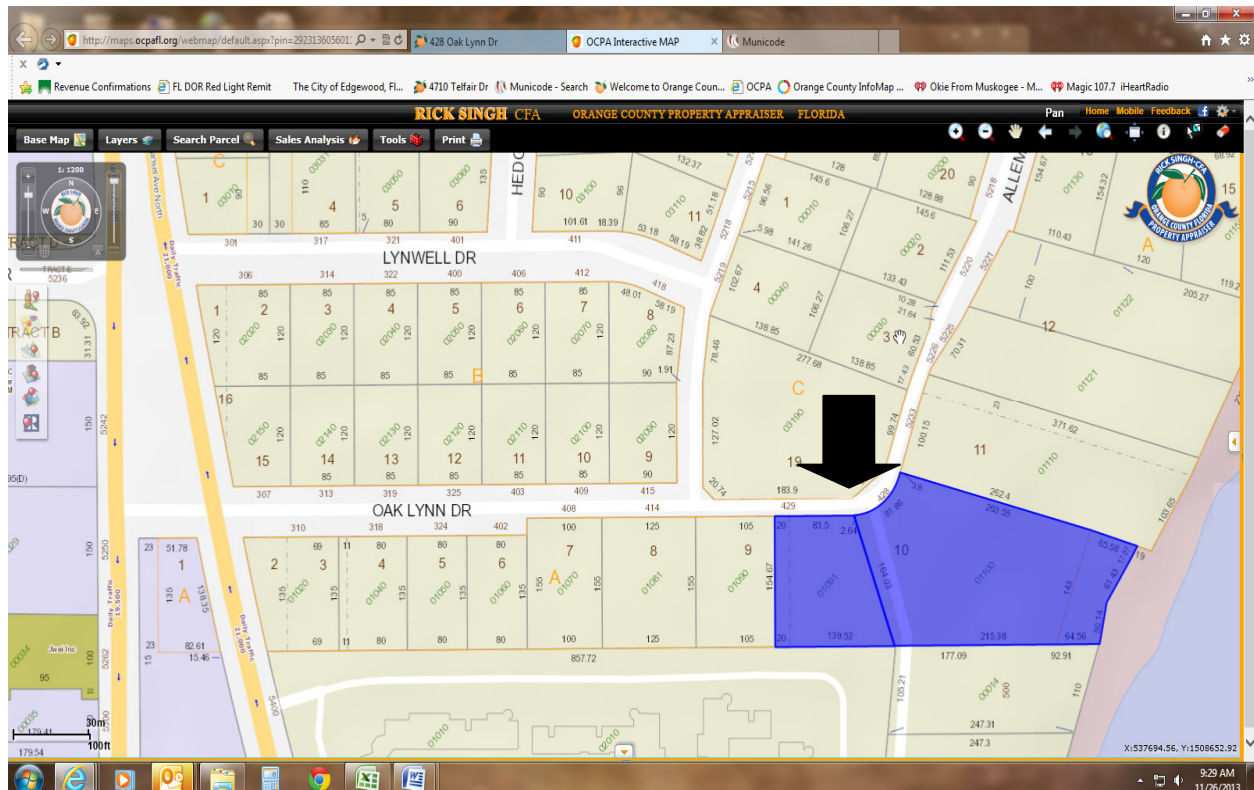


NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE that at its regular meeting on **Monday, December 9, 2013**, the Planning and Zoning Board of the City of Edgewood, will consider **Variance Application No. 2013-03** to allow **Carl and Amy Peterson at 428 Oak Lynn Drive** is requesting a variance to **exceed the height of their fence from the required 4 feet to 5 feet** in a R-1AA residential district. (City Code of Ordinances, Reference Section 134-517) The application was submitted by John Terrell, on behalf of the property owner. The meeting will be held in the Council Chambers of City Hall, 405 Larue Avenue, Edgewood, Florida beginning at **6:30 p.m.**

The Planning and Zoning Board's recommendation will be forwarded to City Council on December 17, 2013 at 6:30 p.m. for final action.

The subject property is legally described as OAK LYNN SECOND PLAT W/97 PT OF LOT 10 BLK A & LAND ON E DESC AS COMM NW COR LOT 9 BLK A TH N89-51-00E 207.35 FT TO PT OF CURVE CONCAVE NWLY W/ RAD OF 66.90 FT TH NELY THROUGH CENT ANG OF 02-15-49 FOR 2.64 FT FOR POB TH RUN S19-18-47E 164.03 FT TO S LINE SAID BLK A TH N89-55-38E 273.788 FT TO LAKE CONWAY SHORE TH N11-01-15E 50.14 FT N32-07-31E 61.43 FT N30-41-18E 17.07 FT N72-47-33W 65.58 FT TO NE COR SAID LOT 10 TH N74-43-15W 263.55 FT S17-35-00W 3.8 FT TO PT OF CURVE CONCAVE NWLY W/ RAD OF 66.90 FT TH SWLY THROUGH CENT ANG OF 70-00-11 FOR 81.74 FT TO POB



Interested parties may attend this meeting and be heard with respect to this special exception and variance application. In addition, the application may be inspected by the public at the City Clerk's Office, 405 Larue Avenue, Edgewood, Florida. (407-851-2920)

This matter is subject to quasi-judicial rules of procedure. Interested parties should limit contact with the Planning and Zoning Board and City Council on this topic to properly noticed hearings or to written communication to the City Clerk's Office.

Any person aggrieved by a recommendation of the Planning and Zoning Board may file a notice of appeal to the City Council within seven days after such recommendation is filed with the city clerk.

The City of Edgewood desires to accommodate persons with disabilities. Accordingly, any physically handicapped person, pursuant to Chapter 286.26, *Florida Statutes*, should, at least 48 hours prior to the meeting, submit a written request that the physically handicapped person desires to attend the meeting to the City Clerk's Office.

This public hearing may be continued to a future date or dates. Any interested party is advised that the date, time, and place of any continuation shall be announced during the public hearing and that no further notices regarding this matter will be published.

Dated: November 26, 2013

Application: 2013-03 (Variance)
Owner/Applicant Name: Amy Peterson
Public Hearing Date: 9/11/13 12/9/13

This affidavit is to be presented at the public hearing before the Planning and Zoning Board.

SIGN AFFIDAVIT

STATE OF FLORIDA
ORANGE COUNTY

Before me, the undersigned authority, personally appeared Amy T Peterson
to me well known and known to me to be the person described in and who executed the foregoing affidavit,
after being first duly sworn, says:

1. That the affiant posted the notice provided by the City of Edgewood, which contains the time and date of the public hearings involved (i.e. Planning and Zoning Board and/or City Council).
2. That said posted notice also contained the relevant facts pertaining to the application.
3. That said notice was posted in a conspicuous and easily visible place on the subject property not less than ten days prior to the date of public hearing. Date posted: 11/27/13.
4. That the affiant understands that this affidavit is intended to be submitted as a prerequisite for a public hearing, and as such, will be officially filed with the City of Edgewood, Florida.

Amy T Peterson
Signature of owner or authorized representative

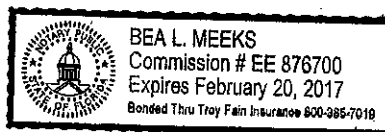
Sworn to and Subscribed before me, this 27th day of November, 2013.

Bea L. Meeks
Print, type, or stamp commissioned name of Notary Public
Florida

Notary Public, State of

Personally Known OR Produced Identification

Type of I.D. Produced _____





405 Larue Avenue - Edgewood, Florida 32809-3406
(407) 851-2920

To: City Council and Planning and Zoning Commission
Ms. Bea Meeks, City Clerk
From: Ellen Hardgrove, AICP, City Planning Consultant
Date: December 4, 2013
Re: Fence Setback Variance Request (428 Oaklynn Drive – Carl and Amy Peterson)

INTRODUCTION OF REQUEST

Request: Variance to allow a 5 feet high fence on the front property line in lieu of the Code maximum of 4 feet

Property Owner: Carl and Amy Peterson

Location: 428 Oaklynn Drive (both shaded areas)

Tax ID #s: 13-23-29-6056-01-090 – vacant lot
13-23-29-6056-01-091 – vacant lot
13-23-29-6056-01-100 -- house

N↑



Existing Zoning: R1AA

Future Land Use: Low Density Residential

Existing on site:
(See map pg. 1) 13-23-29-6056-01-090 vacant
13-23-29-6056-01-091 vacant with large historic tree
13-23-29-6056-01-100 house, access easement

Surrounding uses: North- single family house
South- single family house and Camelot by the Lake Condos
West - single family house
East - Lake Conway

Surrounding Zoning: North- R1AA
South - R1AA and R3
West - R1AA
East - Lake

CONSIDERATION OF REQUEST

Request

The request is to allow a 5 feet high fence along the front property line of the three lots of the subject property. According to Section 134-517 of the Edgewood Code, the maximum height of a fence within a front yard setback (on the property line as requested) of a residentially zoned lot is four feet. The lot front for non-corner lots, by definition, is the street side. The front yard setback for the R1AA district is 30 feet. Thus, by Code, the requested 5 feet high fence is required to be setback 30 feet from the Oaklynn Drive. Code would allow a 4 feet high fence on the property line.

Standards for Variance Approval

According to Section 134-104, variances are allowed when “there are practical difficulties or unnecessary hardships in complying with the strict letter” of the City Code AND when the applicant proves the following approval standards are met.

1. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.
2. Special conditions and circumstances do not result from the actions of the applicant.
3. Approval of the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in the same zoning district.
4. Literal interpretation of the provisions contained in this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter and would work unnecessary and undue hardship on the applicant.
5. The variance approved is the minimum variance that will make possible the reasonable use of the land, building or structure.

6. Approval of the variance will be in harmony with the general intent and purpose of this chapter and that such variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Analysis of Standards

Do special conditions and circumstances exist?

Staff views the request as two parts due to the access driveway easement creating a division of the property. The house is east of the driveway easement and the vacant lots west of the driveway easement.

The purpose of the fence on the vacant lots, as expressed by the property owner in a phone conversation, is to provide a secure play area for children on the vacant portion of the owned property. Special circumstances do exist on the vacant lots to justify the variance. A historic oak tree is situated about 30 feet from the front property line. Thus, to preserve the tree, a Code compliant five feet high fence would be setback a distance greater than other property owners could enjoy. According to Code, "the preservation of any historic or specimen tree may be considered as a basis for the granting of a variance."

The purpose of proposed fence on the house lot appears to be for aesthetic purpose –continuity of the same fence at the same setback across the entire owned land (excluding the access driveway). Whereas, technically the Oaklynn Drive frontage of the house lot is the "front", the house is oriented to the access easement. The house front faces the access easement and the house driveway is connected to Thus, due to the way the house is situated, the Oaklynn Drive lot frontage is used as a "side". A five feet high fence is permissible along the side lot line.

During field inspection of the property, nonconforming fence heights were noticed on several properties in proximity to the subject property. The house to the north has a 5.5 feet high chain link fence (covered with hedges) on the front property line. A five feet high fence exists along the front property line on a lot three lots north of the subject property. A 5.5 chain link fence extends to the front property line between the subject property and the lot to the west. A 4.5 feet high fence is on the front property line of a lot just west of Haverill Drive. Neither permits, nor variances for these nonconforming fences could be found.

A five feet high fence, situated on the property line, is located on the property directly across the street from the subject property; however, that fence is permissible by Code given the location is a side yard (vs. a front yard).

Did the special condition/circumstance result from the actions of the applicant?

Yes

Will the approval of the variance request confer any special privilege that would be denied to other lands, buildings or structures in the same zoning district?

As stated, other lots nearby have higher than permissible fences existing on the front property lines.

Would denial of this request deprive the applicant of rights commonly enjoyed by other properties in the same zoning district?

See comments above related to nearby lots.

Is the requested variance the minimum variance that will make possible the reasonable use of the land, building or structure?

Locating the proposed fence on the property line of the vacant lots would preserve the historic tree's root system to the greatest extent possible. The canopy of the tree is about 120 feet in diameter. For the lot with the house, given the Oaklynn Drive frontage is used as a "side yard", allowing the fence on the property line would be consistent with Code requirements for fences in the side yard.

Will the approved variance be in harmony with the general intent and purpose of this chapter and such variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare?

Yes, with a conditions of approval. First, an open wrought-iron-look fence is recommended to provide consistency with other fences in the neighborhood and to minimize the visual effect of a fence on the property line. Second, to ensure emergency vehicle clearance width on the access easement, the minimum separation between the fence on the house lot and fence on the vacant lot should be a minimum of 20 feet.

RECOMMENDATION

Approval with the following conditions:

- 1) The fence shall be of open decorative/wrought-iron-look to provide consistency with other fences in the neighborhood and to minimize the visual effect of a fence on the property line.
- 2) There shall be a minimum 20 feet separation between the fence on the house lot and fence on the vacant lot; i.e., the easement width between the fences, be it brick or grass, shall be at least 20 feet in width.

NOTES:

- Per Code, any variance approved by Council shall expire 12 months after the effective date of the approval unless the rights approved by the variance have been exercised prior to the expiration date. Acquisition of necessary building permits, installation of required equipment or initiation of the activity granted shall be considered adequate exercising of the variance rights.
- If the Planning and Zoning Board determines the sole basis of the request for this variance is to preserve a historic tree that would otherwise have to be removed, the Planning and Zoning Board may direct the required variance fee to be waived.

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